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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 139

EDWARD J. SHAUGHNESSY, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION, PETITIONER

vs.

UNITED STATES OF AMERICA, EX REL. IGNATZ MEZEI

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 18, 1952
CERTIORARI GRANTED OCTOBER 13, 1952

SUPREME COURT OF THE UNITED STATES

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1 In United States Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA, EX REL., IGNATZ MEZEI, RELATOR-APPELLEE

AGAINST

EDWARD J. SHAUGHNESSY, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION, ELLIS ISLAND, NEW YORK HARBOR, OR ANY OTHER PERSON HAVING THE SAID RELATOR-APPELLEE IN CUSTODY, RESPONDENT-APPELLANT

Statement under rule 15b

This is an appeal from an order of the Honorable Irving R. Kaufman, United States District Judge, entered on December 14, 1951, sustaining the writ of habeas corpus herein and directing the relator's discharge on parole on the conditions therein stated.

No hearing was held on said writ, except that oral argument was had on October 30, 1951. This appeal from the aforesaid order was taken on December 17, 1951. On December 21, 1951, the relator-appellee filed a Notice of Cross Appeal.

There has been no change of parties or attorneys.

October 22, 1951

2 In United States District Court, Southern District of New York

UNITED STATES OF AMERICA, EX REL., IGNATZ MEZEI, RELATOR

AGAINST

EDWARD J. SHAUGHNESSY, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION, ELLIS ISLAND, NEW YORK HARBOR, OR ANY OTHER PERSON HAVING THE SAID RELATOR-APPELLEE IN CUSTODY, RESPONDENT

Writ of habeas corpus

The President of the United States of America:

To Edward J. Shaughnessy, District Director, Immigration and Naturalization Service, Ellis Island, New York, or any other person having the said Relator in custody.

GREETINGS: The body of Ignatz Mezei, by you illegally detained and imprisoned, it is said, have you before the District Court of the United States in and for the Southern District of New York, at Room 506 of the United States Courthouse, Foley Square, in the Borough of Manhattan, City and State of New York, at 10:30 o'clock in the forenoon thereof of the 26th day

of October, 1951 together with the cause of his detention to
3 undergo and receive what this Court may deem fit and proper in the premises and have you them and there this writ.

Witness, Honorable John C. Knox, Chief Judge of the District Court of the United States in and for the Southern District of New York, this 22nd day of October 1951, and of the Independence of the United States of America the one hundred seventy-sixth year.

WILLIAM V. CONNELL,
Clerk of the District Court of the United States, Southern District of New York.

Writ allowed the 22nd day of October 1951.

SYLVESTER J. RYAN,
United States District Judge.

4 In United States District Court

Petition for Writ

October 17, 1951

To the Honorable Judges of the District Court of the United States, Southern District of New York:

Your Petitioner, Ignatz Mezei, for his petition for a Writ of Habeas Corpus, respectfully alleges:

1. That I am a native of Great Britain, having been born in Gibraltar on May 2, 1897, and I am now 54 years of age.

2. That I arrived in the United States on December 23, 1923, when I was admitted for permanent residence and thereafter I resided in Buffalo without any interruption until May 17, 1948. I am married to an American citizen wife residing in Buffalo.

3. That during the War I worked for the United States Coast Guard, I was an air-raid section warden, I donated blood three times, and I was engaged in selling United States War Bonds.

4. That on or about May 17, 1948, I visited Europe for the purpose of seeing my dying mother but was unable to visit her because I was refused permission to enter Rumania.

5. That thereafter I experienced difficulty in securing an
5 exit permit from Hungary and it was not until January 12, 1950, that I was able to leave that country for the purpose of returning to the United States.

6. That on or about February 9, 1950, I arrived at New York on the S. S. "Isle de France" and I applied for admission to the United States as an immigrant. That at that time I was in pos-

session of appropriate documents authorizing my admission to the United States as a permanent resident.

7. That on or about February 9, 1950, I was temporarily excluded from admission to the United States by an immigration inspector of the New York District.

8. That on May 16, 1950, the Attorney General ordered that my temporary exclusion be made permanent without the right of a hearing before a Board of Special Inquiry on the ground that my entry would be prejudicial to the public interest for security reasons.

9. On information and belief that such order of exclusion without a hearing is only authorized by regulation where based upon information of a confidential nature, the disclosure of which would be prejudicial to the public interest.

10. On information and belief that the primary basis of my exclusion without a hearing is my alleged membership in the International Workers Order, an organization on the Attorney General's proscribed list.

11. That the Supreme Court has held that the listing of this organization on the Attorney General's list without a hearing is improper (Anti-Fascist Committee v. McGrath, 341 U. S. 123 at 134).

6 12. That my membership in the International Workers Order was entirely innocent, solely for the purpose of insurance benefits, and that at no time did I participate in any of the alleged subversive aims which have been attributed to the said organization.

13. Upon information and belief that there is no basis for denying a hearing to me because of confidential information the disclosure of which would be prejudicial to the public interest, and that the Attorney General's decision refusing to grant me a hearing is arbitrary, capricious, contrary to law, erroneous, and illegal.

14. That on July 15, 1950, I was placed on board the S. S. "Isle de France" for the purpose of deportation to France but upon my arrival at France I was refused permission to land and was returned to the United States on the same vessel.

15. That I was again placed on board a vessel of the French Line, the "S. S. Liberte" on November 29, 1950, for the purpose of deportation to France and I was again returned with the ship on December 14, 1950, as the French authorities again refused to accept me as a deportee.

16. That since December 14, 1950, I have been detained at Ellis Island, New York. That my continued detention is illegal.

17. That upon information and belief, the respondent, the District Director of the Immigration and Naturalization Service at

New York made a third attempt to have me shipped to France but the French Line declined to again send me back to that country.

18. That an application was made to the Commissioner of Immigration to authorize my release from custody but the same was refused.

19. That upon information and belief, under the law and the Attorney General's order of exclusion, I am deportable to the country whence I came. That I embarked to the United States from France but that country has definitely refused to accept my return and has requested the United States to allow me to return to my home here.

20. That I have no domicile in any other country except the United States where I have resided for the past 28 years with the exception of a temporary visit to Hungary.

21. Upon information and belief that there is no country which is willing to accept me pursuant to the order of exclusion which has been entered by the Attorney General.

22. That I have no means nor prospects of being able to secure admission into any other country in the World and upon information and belief that no country in the World will accept me in view of the Attorney General's order of exclusion against me.

23. That as a result of the foregoing, unless I am released from custody I will be compelled to spend the rest of my life detained at Ellis Island although I have committed no crime, and without an opportunity to meet the alleged charges which have been placed against me but which the respondent and the Attorney General refuse to disclose to me.

24. That on July 5, 1950, Judge Gregory F. Noonan denied an application made by me for a writ of habeas corpus. This application was dismissed prior to the first attempt of the Attorney General to deport me to France.

25. That on October 15, 1950, a second writ of habeas corpus was sought and at that time the respondent filed an affidavit stating that the French Line was ready and able to effectuate the outstanding order of exclusion. Accordingly the writ was denied by Judge Sylvester Ryan on November 17, 1950.

26. A third writ was brought on February 14, 1951, and again the Immigration authorities alleged that there would be no prolonged delay in connection with effectuating my deportation. Accordingly on March 21, 1951, Judge McGohey directed the dismissal of the writ.

27. That on May 25, 1951, I personally, without the assistance of counsel, requested that a writ issue and the matter was set down for hearing as to whether or not a writ should issue. The court thereafter determined not to issue a writ on my behalf.

28. That despite the prior denial of the writ herein, it is respectfully submitted that a question is presented as to whether or not the Attorney General had authority to deny me an exclusion hearing where it is alleged that the alleged confidential information can be safely disclosed. In addition it should be pointed out that it now definitely appears that there is no place to which I can be deported. In view of the fact that I should not be held in detention for the rest of my life at Ellis Island in a civil matter, I respectfully submit that a writ should now issue to test the legality of my continued detention under these circumstances.

9 29. That the information herein contained has been obtained from the records of the Immigration and Naturalization Service and from my own personal knowledge.

30. That no previous application has been made for a writ of habeas corpus except as hereinbefore set forth.

Wherefore, your petitioner respectfully prays that a Writ of Habeas Corpus issue herein, requiring the respondent to produce before this Honorable Court the body of Ignatz Mezei, the relator herein, together with the cause of his detention, to receive and abide by such order as may be made herein.

(S) IGNATZ MEZEI.

[*Duly sworn to by Ignatz Mezei; jurat omitted in printing.*]

10 In United States District Court

Return to writ of habeas corpus

October 30, 1951

I, Lester Friedman, attorney in the Office of the District Counsel, Immigration and Naturalization Service, United States Department of Justice, hereby certify and make return to the writ of habeas corpus herein, based upon the official records of the Immigration and Naturalization Service, as follows:

1. The relator, Ignatz Mezei, then 53 years of age, an alleged native of Gibraltar, who claims to be now stateless, arrived at the Port of New York on February 9, 1950, on the "SS Ile de France" and applied for admission to the United States as an immigrant. On that date he was temporarily excluded from admission to the United States by an Immigrant Inspector pursuant to the provisions of 8 C. F. R. 175.57.

2. On May 10, 1950, the Attorney General of the United States ordered that the relator's temporary exclusion be made permanent without the right of a hearing before a Board of Special Inquiry since the decision was based upon confidential information, the disclosure of which would be prejudicial to the public interest, under the authority of and pursuant to the provisions of 8 C. F. R.

175.57. Such decision was based upon a finding that the
11 relator was excludable as one whose entry is deemed prejudicial to the public interest for security reasons.

3. On May 23, 1950, a communication was addressed to Mrs. Carol King, who had filed a notice of appearance as attorney for the relator, advising said attorney that the temporary exclusion of the relator under 8 C. F. R. 175.57 had been made permanent by order of the Attorney General.

4. The execution of the exclusion order was stayed by the allowance on May 25, 1950, of a writ of habeas corpus returnable in the United States District Court for the Southern District of New York on May 31, 1950. The said writ was adjourned from time to time at the request of relator's attorney, Gunther Jacobson. The writ of habeas corpus came on to be heard before the Honorable Gregory F. Noonan, United States District Judge, on June 30, 1950. After hearing argument, the aforesaid writ was dismissed and an order to that effect was signed on July 5, 1950.

5. On July 15, 1950, pursuant to the provisions of Section 15 of the Immigration Act of February 5, 1917, as amended (8 U. S. C. 151), the relator was returned to the custody of the transportation company upon whose vessel he arrived in the United States for the execution of the outstanding exclusion order and sailed foreign on the vessel "Ile de France."

6. Upon the relator's arrival in France through the failure of the transportation company to make the necessary arrangements with the French government, the petitioner was not per-
12 mitted to land and return to the United States on the next arrival of the vessel, at which time he was transferred to Ellis Island on August 1, 1950, for safekeeping at the expense of the transportation company, pending arrangements with the French authorities for his acceptance in that country.

7. The French Line, which is owned and operated by the French government, the transportation company upon whose vessel the petitioner arrived, completed arrangements for the return of the relator in accordance with the outstanding exclusion order and was scheduled to remove petitioner in compliance with said order on October 13, 1950. Such arrangements were interrupted by the allowance of a second writ of habeas corpus.

8. The second writ of habeas corpus came on to be heard before the Honorable Sylvester J. Ryan, United States District Judge, who dismissed the same and on November 17, 1950, signed an order dismissing the said writ. That order was filed in this court on November 20, 1950 (Civ. 61-272).

9. On November 29, 1950, the relator again sailed out on the S. S. "Liberte" to France and was returned to the United States

on that vessel on December 14, 1950, inasmuch as the French authorities had again refused permission for him to land in that country. Since December 14, 1950, the petitioner has been detained at Ellis Island for safekeeping at the expense of the transportation company pending final arrangements for the execution of the outstanding exclusion order.

10. On January 16, 1951, the Acting Commissioner of Immigration and Naturalization advised the relator's at-
13 torney that the Immigration Service would not interpose any objection to the relator's departure to any country, at his own expense, provided such departure is effected prior to the date set for his deportation under the exclusion order. The relator is not being detained in the usual sense but is in custody solely to prevent him from gaining entry to the United States in violation of law. He is free to depart from the United States to any country of his own choice.

11. On February 14, 1951, the relator herein sued out a third writ of habeas corpus, which came on to be heard before the Honorable John F. X. McGohey, United States District Judge, on March 9, 1951. This writ of habeas corpus was summarily dismissed by order of the Honorable John F. X. McGohey, filed in this court on March 26, 1951 (Civ. 64–156).

12. On June 6, 1951, the relator caused to be issued an order, directing respondent herein to show cause why a writ should not issue. An affidavit in opposition to the allowance of a further writ of habeas corpus was duly verified on June 7, 1951, and filed in this court. The case then came on for argument before the Honorable Charles A. Dewey, United States District Judge who, by order dated June 12, 1951, denied the petition and disallowed the writ of habeas corpus.

13. After the disposition of the writ of habeas corpus application, the relator was interviewed by an officer of the Immigration and Naturalization Service to whom he stated that he intended to make no further effort to depart from the United States and would do nothing except to attempt to remain in this country.

14 14. On October 11, 1951, the respondent herein was informed by the Central Office of the Immigration and Naturalization Service that the French authorities have refused to permit the relator to land in that country and would not reconsider such decision. By letter dated October 15, 1951, the relator's attorney herein was advised of the refusal of the French authorities to permit his entry into French territory and was further advised that the question of obtaining permission for his return to Hungary has been referred to the Hungarian authorities by the American Legation at Budapest.

15. The United States Department of State is presently negotiating through diplomatic channels abroad with the appropriate Hungarian authorities so that arrangements may be made for the relator's acceptance in that country in the event that he fails to depart from the United States to any other country. In the meantime, the relator is being detained at Ellis Island, New York Harbor, New York for safekeeping in behalf of and at the expense of the transportation company upon whose vessel he arrived.

16. As an excluded alien, the relator is not entitled to parole or bail as a matter of law, particularly since even his temporary release would constitute a security hazard and be prejudicial to the best interests of the United States.

Wherefore, it is respectfully prayed that the writ of habeas corpus herein be dismissed and the relator remanded to the custody of the respondent.

LESTER FRIEDMAN.

Dated New York, N. Y., October 30, 1951.

15 *Relator's exhibit 1*

In United States District Court, Southern District of New York

Civil 70/235

UNITED STATES OF AMERICA, EX REL., IGNATZ MEZEI, RELATOR

AGAINST

EDWARD J. SHAUGHNESSY, DISTRICT DIRECTOR, IMMIGRATION & NATURALIZATION SERVICE, ELLIS ISLAND, NEW YORK, OR ANY OTHER PERSON HAVING THE SAID RELATOR IN CUSTODY, RESPONDENT

DISTRICT OF COLUMBIA,

City of Washington, ss:

Alexander Glattstein, being duly sworn, deposes and says:

1. I reside at 2217 M Street NE., Washington, D. C. I was born in Hungary and I attended Stephan Tisza University of Debrecen where I secured my degree as doctor of laws in June of 1940. Thereafter I was forced to leave from Hungary in 1943.

2. I am acquainted with the citizenship and expatriation laws of Hungary as they existed until 1943. The law which was in force and effect in Hungary during the period of my residence there was the law of December 20, 1879, which governed the acquisition and loss of Hungarian citizenship.

16 3. Hungarian citizenship may be obtained in four ways; First by birth of Hungarian parents; second by legitimation; third, by marriage; and fourth, by naturalization after five years residence. In my opinion, if Ignatz Mezei was born in Gibraltar but had parents who were Hungarian citizens at the time of his birth, then he would have been a Hungarian citizen at birth himself. The provisions governing the acquisition of Hungarian citizenship are set forth at pages 337 and 338 of "Flournoy and Hudson" Nationality Laws.

4. The provisions with regard to the loss of Hungarian citizenship are set forth in "Flournoy and Hudson" Nationality Laws at page 339. As will be noted, there are five ways in which citizenship may be lost. Article 31 of the law of December 20, 1879, provides as follows:

"Absence.—Hungarian citizens, being absent uninterruptedly from the territory of Hungary for more than 10 years without the authorization of a Hungarian Cabinet Minister or of an Austro-Hungarian Minister, shall lose their citizenship.

"The period of absence shall be counted from the day on which the person in question leaves the country without notifying the authorities as specified in article 9 of his intention to retain his citizenship, or if the person left the country with a passport, the period of absence shall be counted from the expiration of his passport.

"The continuity of absence is broken if the absentee notifies the proper authorities of his intention to maintain his Hun-
17 garian citizenship, or if a new passport has been secured, or in lieu of it a permit of stay has been granted by an Austro-Hungarian Consul, or if the absentee has been registered in a Consulate abroad."

5. It is my understanding that Ignatz Mezei arrived in the United States on December 23, 1923, and he remained in the United States without interruption until May 17, 1948. Assuming that he did not have the authorization of a Hungarian Cabinet Minister or of an Austro-Hungarian Minister to remain abroad, and assuming that during this period he secured no Hungarian passport and also did not notify the Hungarian authorities of his intention to remain a Hungarian citizen, it is my opinion that even if he were at any time a Hungarian citizen, then on December 23, 1933, he lost whatever claim he may have had to Hungarian citizenship.

(S) Alexander Glattstein.

Subscribed and sworn to before me this 26th day of October 1951.

(S) John A. Hummer,
John A. Hummer,
Notary Public D. C.

18 *Relator's exhibit 2*

PB/RBS

No. 280/PA 1553

WASHINGTON, *le September 27, 1951.*

Ambassade de France aux Etats-Unis:

DEAR MR. WASSERMAN: In reference to your letter of September 19, I wish to remind you that Mr. Ignatz Mezei is holder of an affidavit in lieu of passport, which was issued to him on December 1, 1949, by the American Consul in Budapest and on which is stamped an Immigration visa No. 27, charged against the British quota.

Mr. Mezei never resided in France and was there in transit only. As far as I know, he never expressed the intention to go to France in order to stay in that country.

Since he did not hold the proper visa, Mr. Mezei was barred twice from entering into France.

The French Embassy has asked to the Department of State, in a note dated February 1, 1951, to intervene with the Immigration Authorities in order that Mr. Mezei may be permitted to enter the United States.

Sincerely yours,

(S) P I Basdevant,
PIERRE BASDEVANT,
Secretary of Embassy.

Mr. JACK WASSERMAN,
Counselor at Law,
Warner Building, Washington 4, D. C.

19 *Relator's exhibit 3*

I. b. 31

Alien's Order, 1920

To the Alien:

Leave to land has been refused in the case of the alien passenger named Ignatz Mezei, a subject of ? brought to the Port of Plymouth in the ship "Ile de France" from the Port of New York. Grounds of refusal: Art. 15 (1), art. 1 (3) (2). Alien's Order 1920. His dependents who have also been refused leave to land are ————.

Signature of Immigration Officer (Illegible).
Immigration Officer's Stamp (Immigration Officer).
(4).
21 Jul 1950, PLYMOUTH.

20 *Relator's exhibit 4*

French Line, Compagnie Générale Transatlantique, 17 State Street, New York 4, N. Y. Cable Address: Transat. Telephone HAnover 2-8300.

OCTOBER 4, 1951.

LAMBERT O'DONNELL, Esq.,
957 Warner Building, Washington 4, D. C.

Re: Ignaz Mezei—Detained at Ellis Island

DEAR MR. O'DONNELL: This will serve to certify the following facts relative to Ignaz Mezei who has been denied admission into the United States and is presently being detained at Ellis Island, New York.

On February 2nd, 1950, Ignaz Mezei was permitted to board the S. S. "Ile de France" at the port of Le Havre, France, for transportation to New York. He was possessed of an affidavit in lieu of a passport to which a quota visa, application No. I-574.838, was affixed which had been duly issued to him by the American Consulate at Budapest on December 1st, 1949.

Upon his arrival at the Port of New York aboard the S. S. "Ile de France," Mr. Mezei was transferred to Ellis Island by the United States Immigration authorities for examination. Thereafter, on July 12, 1950, he was ordered deported by said United States Immigration authorities and was placed aboard the S. S. "Ile de France" which left New York on July 15th, 1950.

21 Pursuant to the deportation order issued by the Immigration authorities, Mezei was to be deported to England since he was found to have been born aboard a British vessel in British waters. Upon arrival of the S. S. "Ile de France" at the port of Plymouth, England on July 21st, 1950, attempt was made to land him. However, the British authorities denied his admission refusing to recognize Mezei as a British subject. The S. S. "Ile de France" departed from said port the same day being obliged, therefore, to maintain Mezei aboard. When the vessel reached the port of Le Harve, France, further attempt was made by our company to have him land and be admitted in France. The French authorities, however, also refused his admission since he was not a French subject and was not possessed with a visa authorizing his admission to France. Our Home Office at Paris solicited the assistance of the French Merchant Marine Administration which in turn intervened and went before the French Ministry of the Interior to try to have Mezei admitted, but to no avail.

Mr. Mezei, therefore remained on board until the vessel sailed from Le Havre on July 26th, 1950, bound for New York. Upon

arrival in New York on August 1st, 1950, Mezei was once again detained at Ellis Island by the United States Immigration authorities for reexamination of his case.

Thereafter efforts were made to assist Mezei in establishing that he is a British subject. Our representative helped to arrange and assisted at meetings between the British Consul of New York and Mezei. The latter was not, however, able to prove to the British Consul's satisfaction that he was a British subject.

Our Home Office also solicited the assistance of the Paris representatives of the O. I. R. (International Refugee Organization) who in turn referred the matter to the Director General of said organization at Geneva and to its delegate at Washington, D. C.

Thereafter, on November 29th, 1950, he was ordered deported on the S. S. "Liberte." Upon arrival of the vessel at the port of Le Harve, France, further efforts were made by our company to permit his admission in said country. The Minister of the Interior was reapproached but all efforts to have Mezei admitted were unsuccessful. The French authorities refused to allow him to land and we were therefore obliged to keep him on board and return him to the port of New York where the S. S. "Liberte" arrived on December 14th, 1950. Once again he was taken into custody by the United States Immigration authorities and detained at Ellis Island where he continues to remain.

Our representatives have approached consulates of various European nations with view to the issuance of a visa on behalf of Mezei, but here again all efforts have been fruitless.

We sincerely trust that you will be able to work out a satisfactory solution to release our company of this intolerable situation in which we find ourselves involved through no fault on our part.

Yours very truly,

(Signed) C. Di Maria,
C. Di Maria,
Manager, Legal Department.

Dear

Relator's exhibit 5

[Emblem]

CONSULATE GENERAL OF COSTA RICA,
420 LEXINGTON AVE., NEW YORK, N. Y.,
August 13, 1951.

DEAR SIRS: In answer to yours of Aug. 10, 1951, we are sorry to inform you that we cannot give you a visa to enter Costa Rica.

Very truly yours,

[SEAL] CONSULATE GENERAL OF COSTA RICA,

BY: ——— ———

24 *Relator's exhibit 6*

No. 1703/1209

CONSULADO GENERAL DE CHILE,
61 BROADWAY, NEW YORK 6, N. Y.,
August 16th, 1951.

Mr. IGNATZ MEZEI,
O. R. F., Ellis Island.

DEAR SIR: In reply to your letter of the 10th instant, we are sorry to inform you that we cannot grant visas except under instructions from our Foreign Office.

Yours very truly,

(Signed) C. de la Barra,
CARLOS DE LA BARRA,
Dept. Consul General.

25 *Relator's exhibit 7*

[Emblem]

Consulado

Forma 102

Number: 2411

File: 73–32/ 524.4.M.

Ref: deportation

NEW YORK, N. Y., *August 13, 1951.*

Mr. IGNATZ MEZEI,
Ellis Island, N. Y. Harbor, N. Y.

DEAR SIR: This is in reply of your letter of August 10, ult.

I regret to inform you that, according to Mexican Immigration law any person deported from other country, not matter their nationality, cannot allow to go into Mexico on any of our Immigration sections.

Yours very truly,

(Signed) J. L. de Larrea,
Dr. JOSÉ LELO DE LARREA,
General Consul of Mexico.

JLL/fgo.

26 *Relator's exhibit 8*

DL No. 08015

CONSULADO GENERAL DE COLOMBIA,
444 MADISON AVENUE, NUEVA YORK 22, N. Y.,
August 16, 1951.

Mr. IGNATZ MEZEI,
O. R. F., Ellis Island, N. Y.

DEAR SIR: In answer to your letter of August 10th, we regret to advise you that under the present Immigration laws of Colombia, it is not possible to give you a visa to enter our country.

Very truly, yours,

(Signed) L. Carreño,
LUIS CARREÑO,
Consul General of Colombia.

ag.

27 *Relator's exhibit 9*

INM. 3901

CARACAS, 21 DE NOVIEMBRE DE 1.950,
141° y 92°,

Señor IGNATZ MEZEI,
387 Mackinow Street,
Buffalo 10, New York, U. S. A.

Avísole recibo de su correspondencia del 1° de los corrientes, y en atención a lo que enella expresa, le manifesto que por los momentos no se puede acceder a sus deseos.

DIOS Y FEDERACIÓN,
Por el Presidente.

VINCENCIO BAEZ FINOL,
Jefe del Depto.

VBF/et.
o. y cc.
Venezuela

28 *Relator's exhibit 10*

CONSULADO GENERAL DE EL SALVADOR

270 BROADWAY, NEW YORK

No. 672

A–125.61 & 855

NEW ADDRESS:
55 WEST 42ND STREET, NEW YORK 18, N. Y.,
August 28, 1951.

Mr. IGNATZ MEZEI,
O. R. F., Ellis Island, New York.

DEAR SIR: In reply to your letter of August the 11th, I am sorry to inform you that we are not in a position to issue you a visa like the one you request.

Very truly yours,

(Signed) F. Trabanino,
FERNANDO TRABANINO,
Consul General.

JRS/mmh.

29 *Relator's exhibit 11*

CONSULADO GENERAL DE PANAMA,
30 ROCKEFELLER PLAZA, NEW YORK,
August 24, 1951.

Mr. IGNATZ MEZEI,
O. R. F., Ellis Island, New York.

DEAR SIR: In reply to your letter of August 13, I am sorry to inform you that the Immigration Laws of Panama do not authorize me to grant you a visa.

Yours truly,

(Signed) Guillermo de la Guardia,
GUILLERMO DE LA GUARDIA,
Consul General.

30 *Relator's exhibit 12*

759/951

CONSULADO GENERAL DEL URUGUAY,
New York, August 20, 1951.

Mr. IGNATZ MEZEI,
O. R. F., Ellis Island, N. Y.

DEAR SIR: With reference to your letter of August 13, 1951, I regret to inform you that, according to our Laws of Immigration, you cannot apply for a visa of any kind to enter Uruguay.

Very truly yours,

(Signed) Juan F. Domínguez,
JUAN F. DOMÍNGUEZ,
Consul General.

31 *Relator's exhibit 13*

No. 789/511.141

10 ROCKEFELLER PLAZA, NEW YORK 20, N. Y.,
August 16th, 1951.

Mr. IGNATZ MEZEI,
O. R. F., Ellis Island, New York.

DEAR SIR: In reply to your letter of August 9th, I regret to inform you that this Consulate cannot grant the visa that you have requested.

Yours very truly,
(Signed) (Illegible),
p. RAYMUNDO N. LOYOLA DE CASTRO,
Vice consul of Brazil.

MTJ.

32 *Relator's exhibit 14*

CONSULADO GENERAL DE BOLIVIA,
10 Rockefeller Plaza, New York 20, N. Y.

Regret to advise you that your request has not been accepted.

[SEAL].

33 *Relator's exhibit 15*

[Emblem]

WHitehall 4-2784-5

CONSLAT DE LA REPUBLIQUE D'HAITI,
32 BROADWAY, NEW YORK 4, N. Y.,
August 14, 1951.

Mr. IGNATZ MEZEI,
O. R. F., Ellis Island, N. Y.

DEAR SIR: Referring to your request of August 13th, we are sorry to state that you will be unable to secure a visa for Haiti.

Yours very truly,

(Signed) Louis Decatrel,
LOUIS DECATREL,
Consul General.

LD/ga.

34 *Relator's exhibit 16*

[Emblem]

0932

CONSULADO GENERAL DE GUATEMALA,
30 ROCKEFELLER PLAZA, NEW YORK 20, N. Y.,
August 13, 1951.

MR. IGNATZ MEZEI,
O. R. F., Ellis Island, N. Y.

DEAR SIR: In reply to your letter of August 11, 1951, I regret to advise that this Consulate is in no position to issue you a visa to go to Guatemala, unless authorized to do so by our State Department, to which we would have to consult. To do so, it would be necessary for you to appear in person at this Consulate, and to fill out the special forms we have for this purpose, to which three photographs would have to be attached. All this procedure would take from twenty days up, most likely up.

It would also be required of you to show that you have sufficient funds to take care of your immediate needs, and state what you intend to do for your living while in Guatemala.

Very truly yours,

(Signed) Mario G. Ramirez,
MARIO G. RAMIREZ,
Consul General.

mgr/mi.

35 *Relator's exhibit 17*

UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

Washington 25, D. C.

Please address reply to and refer to this file No. A-2024778.

OCTOBER 15, 1951.

JACK WASSERMAN,
Counselor at Law,
Warner Building, Washington 4, D. C.

DEAR SIR: This will refer to your recent visit to the Central Office concerning your application for the release on bond or parole of Mr. Ignatz Mezei, who is presently detained at Ellis Island under an outstanding excluding order.

A review of the records in this case shows that Mr. Mezei was temporarily excluded under the provisions of 175.57 (a), Title 8, Code of Federal Regulations. On May 10, 1950, the Attorney General entered an order stating that upon consideration of the report submitted in accordance with law, it had been determined on the basis of confidential information, the disclosure of which would be prejudicial to the public interest, that Mr. Mezei is excludable as one whose entry is deemed prejudicial to the public interest. This order denied him a hearing before a
36 Board of Special Inquiry and directed that his temporary exclusion be made permanent under 8 CFR 175.57 (b). As a result of this order, he was deported on the S. S. "Ile de France" on July 15, 1950.

Upon Mr. Mezei's arrival at Le Havre, France, he was refused permission to land. He was returned to the United States on the same vessel. He was again deported on the S. S. "Liberte" on November 29, 1950, but returned with this ship on December 14, 1950, as the French authorities again refused permission for him to enter France. Since December 14, 1950, Mr. Mezei has been held for safekeeping at Ellis Island, New York.

In view of the circumstances in this case the Service requested the Department of State to make representations to the appropriate officials of the French Government looking toward the return of Mr. Mezei to France, the country from which he embarked to the United States and, at the same time, the State Department was requested to make representations to the Hungarian authorities for permission for Mr. Mezei's return to Hungary, the country of his nationality.

With respect to the representations made to the French authorities, Mr. Mezei was refused permission for entry into French territory. However, with regard to obtaining permission for his return to Hungary, that request has been referred to the Hungarian authorities by the American Legation at Budapest, and we are now awaiting a decision.

Your application, together with the information furnished by you, has received the most careful consideration. However,
37 it has been concluded that on the basis of confidential information contained in our files we are unable to take favorable action upon your request for his release on bond or parole.

The Service proposes to proceed with the deportation of Mr. Mezei as soon as such action becomes practicable, unless he arranges to depart from the United States under the excluding order prior to the completion of arrangements for his deportation.

Very truly yours,

(Signed) W. F. Kelly,
W. F. KELLY,
Assistant Commissioner, Enforcement Division.

38 November 9, 1951

In United States District Court, Southern District of New York

Civ. 70-235

[Same title]

Opinion by Irving R. Kaufman, D. J.

Appearances: Jack Wasserman, Attorney for Relator, Warner Building, Washington 4, D. C. Myles J. Lane, United States Attorney for the Southern District of New York, Attorney for Respondent. William J. Sexton, Assistant United States Attorney, Of Counsel.

IRVING R. KAUFMAN, *D. J.*

Mezei was excluded from the United States for undisclosed security reasons on February 9, 1950. He has been detained at Ellis Island for 21 months while the government has failed in efforts to deport him. No foreign government has shown a willingness to allow his entry. He now seeks a writ of habeas corpus, claiming that he has been detained an unreasonable period of time.
39 The case presents the vexatious problem of what to do with an alien who has no place to go.

There is a certain vagueness about Mezei's history. His parents were either Hungarian or Roumanian—there is some doubt—but he claims that he was born on Gibraltar and is therefore a British citizen. He came to the United States in 1923 and remained here until 1948. The government alleges that he was never lawfully admitted to the United States for permanent residence but this objection seems meaningless now since it is obvious that the government took no action against him in that earlier residence period. He is married to an American citizen, and during World War II he participated in various patriotic activities which he describes generally as work for the Coast Guard, air-raid warden, blood donor, and selling United States war bonds, though he does not indicate with what vigor he pursued these endeavors. Without much doubt his conduct as a resident alien between 1923 and 1948 was unexceptional. On May 17, 1948, Mezei went to Europe to see his dying mother, who, he says, lived in Roumania. He reached Hungary, but claims he was unable to gain admittance to Roumania, and returned to the United States in February 1950 after experiencing difficulty in gaining exit from Hungary. On February 9, 1950, he was transferred from the French liner Ile de France to Ellis Island on a temporary exclusion order under 8 Code of Federal Regulations 175.57.[1] The Attorney General entered a permanent exclusion order on May 10, 1950, without hearing. Thereafter, until this time, the government has made fruitless efforts to deport Mezei. Twice he was turned over to the French Line for return to France. Each time France refused to accept him. Except for those periods of transit—in July 1950 and November 1950—he has been detained at Ellis Island, an elapsed period of almost 21 months. Mezei has brought four earlier writs in this case. Each one was denied, apparently upon advice from the government that it was prepared to effectuate his deportation. At this time the government substantially admits an inability to deport Mezei. England rejects

[1] § 175.57 "(a) Any alien * * * may be excluded temporarily if at the time he applies for admission at a port of entry it appears that he is or may be excludable under one of the categories set forth in § 175.53. The official excluding the alien shall immediately report the facts to the head of his department, who will communicate such report to the Secretary of State. Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States. Any alien so temporarily excluded by any other official shall not be admitted and shall be excluded and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States."

"(b) In the case of an alien temporarily excluded by an official of the Department of Justice on the ground that he is, or may be excludable under one or more of the categories set forth in § 175.53, no hearing by a board of special inquiry shall be held until after the case is reported to the Attorney General and such a hearing is directed by the Attorney General or his representative. In any special case the alien may be denied a hearing before a board of special inquiry and an appeal from the decision of that board if the Attorney General determines that he is excludable under one of the categories set forth in § 175.53 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest."

his claim citizenship and refuses him entry. France, as noted, twice has denied him. The State Department has been negotiating for many months with Hungary for his readmission, but Hungarian sources remain mute. Even were Hungary to admit Mezei, there is considerable question whether he may properly be deported there. Mezei himself has sought entry to at least
41 a dozen countries, but without success. The man apparently has no place to go. Is the government justified in keeping him at Ellis Island; perhaps indefinitely?

Mezei does not contest the government's right to exclude an alien without a hearing where a finding is made that a public hearing would lead to disclosure of confidential information prejudicial to the best interests of the United States. He contends, however, that disclosure of the reasons for his exclusion would not be prejudicial and his present detention without a hearing is illegal. The exclusionary power of the Attorney General was settled by the Supreme Court in *U. S. ex rel. Knauff* v. *Shaughnessy*, 338 U. S. 537 (1950) where it was held beyond the province of any court, absent express authority in law, to review the determination of the political branch of the government to exclude an alien. This was applied particularly to the case of an alien excluded without a hearing because the Attorney General deemed the disclosure of information on which he based his opinion dangerous to public security. The rule is clearly a harsh one. It is predicated upon the belief that exclusion is purely a political act, performed by the executive or upon his delegated authority. The court has no function in our system of separated powers to challenge such an act. Mezei, understandably, would wish to have the facts of his exclusion brought out in open hearing. Under the *Knauff* decision this court has no power to award such a hearing. That is a discretionary power of the Attorney General.

The District Court has the power to release an alien from custody who has been detained an unreasonably long time where his deportation cannot be effectuated. *U. S. ex rel. Chu*
42 *Leung* v. *Shaughnessy*, D. C. S. D. N. Y. 1950, 88 F. Supp. 91; *In re Krajcirovic*, D. C. Mass. 1949, 87 F. Supp 379; *Staniszewski* v. *Watkins*, D. C. S. D. N. Y. 1948, 80 F. Supp. 132; *U. S. ex rel. Janavaris* v. *Nicolls*, D. C. Mass. 1942, 47 F. Supp. 201. The government grudgingly admits that this may stand as an abstract principle of law but denies its relevance here on two grounds. (1) That Mezei is a security risk properly excluded from the United States and that no authority exists in law for releasing him merely because he has been detained a prolonged period while attempts were made to deport him. (2) That Mezei is not really being detained because he has always been free to

leave the country when he wanted. This, in view of the clear documentary evidence that Mezei cannot gain admission anywhere, hardly jibes with the usual cold realism of immigration policies. The government states flatly that an alien applying for admission to the United States (and this includes one who has already arrived on our shores) has no Constitutional rights. I do not agree. The Constitution applies even to aliens on Ellis Island. "Wherever the Constitution of the United States is applicable, and that includes ports of entry, an alien as well as a citizen is guaranteed that he will not be deprived of his liberty without due process." *In re Krajcirovic, supra.*

What constitutes an unreasonable detention is a perplexing matter. Section 154, Title 8 U. S. C. provides that

"All aliens brought back to this country in violation of law shall be immediately sent back * * * to the country whence they respectively came * * * unless in the opinion of the Attorney General immediate deportation is not practicable or proper."

43 The government insists that there can be no unreasonable detention in the case of an alien held for security reasons. To secure the argument, it is necessary to hurdle several cases in which an alien, detained for an unreasonable period, has been released. In U. S. ex rel. Janavaris v. Nicolls, supra, Judge Wyzanski said (p. 202):

"A more important question remains: Whether under the statute giving the district courts power to issue writs of habeas corpus this court has the power to release from custody an alien who has been detained an unreasonably long period of time by the Department of Justice after it has become apparent that although a warrant for his deportation has been issued, the warrant cannot be effectuated. That this Court has such power is hardly open to question * * * The theory on which the court is given the power to act is that the warrant of deportation, not having been able to be executed, is functus officio and the alien is being held without any authority of law. The issue, therefore, simmers down to this: Has the Department of Justice kept the alien such an unreasonably long period of time that the warrant has lost its efficacy?"

Judge Wyzanski found five months detention excessive.

In In re Krajcirovic, supra, Judge Wyzanski bolstered his decision in In re Janavaris. In that case he held a detention period of nine months unreasonable. The alien had been ordered excluded. It was likely that only Czechoslovakia, which he had fled, would take him. There, he was a political refugee, sentenced

in absentia to death. The language of the case is pertinent here.

44 "The District Director contends Krajcirovic is not confined because the Department of Justice has given him the option to depart voluntarily to any place outside the United States * * * In my opinion the contention rests on an unsound factual basis."

In the case at bar, no country has yet indicated a willingness to accept Mezei.

Judge Leibell, in this district, has held a seven months detention period unreasonable. Staniszewski v. Watkins, supra. No country would take Staniszewski. He was born in Poland but Poland rejected him. Judge Leibell said:

"What is to be done with petitioner? The government has had him in custody about seven months and practically admits it has no place to send him out of the country * * * I am most concerned with the seemingly helpless status of the petitioner and the failure of the proper officials to find a means of releasing petitioner from confinement at Ellis Island."

All of these cases should be limited to their facts, the government asserts. They do not involve an alien who has been adjudged a security risk. According to the government, the security element justifies an infinitely longer detention. There is some logic in this. An alien, who in a given case might be proved an enemy spy, should not be entitled to roam free after a short detention period, if the government is unable to effect his deportation. More aptly, in a case of that nature, the period of reasonable detention would be longer. A reasonable time is not a fixed, immutable period. It varies with the circumstances of each case. U. S. ex rel.

45 Consola v. Karmuth, D. C. W. D. N. Y. 1945, 63 F. Supp. 727; Moraitis v. Delaney, D. C. Md., 1942, 46 F. Supp. 425, modified other grounds, 4 Cir. 1943, 136 F. 2d 129.

There is no doubt that the security charge adds an element of great seriousness. Judge Ryan has recently decided a similar case in this district U. S. ex rel. Bojarchuk v. Shaughnessy (decided October 31, 1951). Bojarchuk was detained for 13 months at Ellis Island after being excluded as a security risk. The court denied his application for habeas corpus. The government relies heavily on the general similarity of that case as binding precedent in this. It is important to note Judge Ryan's exact words:

"That relator has long been retained cannot be questioned; that this is of his own making appears clear. Unsuccessful efforts to deport him to Poland where he was born, were made by the Government. *Relator has always been and now is free to leave this*

country for any country he desires. He has not chosen to do so; he may not by his own inaction and attempt at unlawful entry gain admittance into this country, especially after a finding that his entry is deemed inimical for security reasons." [Emphasis added.]

The government points to Judge Ryan's statement that the relator is free to leave the country. He cannot stay here simply by his own inaction. The government observes that Mezei had no trouble in leaving the country in 1948 "when it served his purpose," and tells this court, "He found no difficulty whatever in procuring Hungarian documents and travelling to Hungary in 1948; yet he now pretends that he cannot depart from the United States and expects the administrative authorities
46 and this court to give consideration to such specious contention." I find Mezei's contention far from specious. The world has changed a great deal since 1948. The government admits that it has been negotiating with Hungary for about ten months. There has been no observable progress. Mezei has produced documents before the court to show that at least 15 countries have refused him admission. If this is inaction, I should appreciate a government definition of action.

Mezei's case may further be distinguished from Bojarchuk by the difference in detention period. Bojarchuk was held 13 months. Mezei has now been held 21 months. The variance is great. The government must be prepared to show a grave security risk to justify the detention time.

We have come full circle again to the basic question—what is an unreasonable detention. I have said that the circumstances of each case determine the reasonableness or unreasonableness. The government sounds a grim warning that releasing this alien from detention will bring a flood of enemy agents, spies, saboteurs, madmen, homicidal maniacs, and lepers down upon us. I agree that in the proper case reasons may exist to detain an alien for a prolonged period. A grave security risk of the character envisioned by the government surely maybe one of these.

I also recognize that periods ranging from five months to nine months have been held unreasonable in the past and that when a court says the detention of a security risk for thirteen months is not unreasonable, that is far from saying that twenty-one months is reasonable. I think a burden has been placed on the government. In my mind the detention of an alien for 21 months pending deportation, is, absent other considerations, completely unreasonable. The burden now shifts to the government to
47 prove to this Court that Mezei's release, pending effectuation of the deportation order, would endanger public safety. If the information on which such a decision must be based is of such a confidential nature that its disclosure would be

serious breach of security, the offer of proof will be heard in camera.

The government will have a period of time hereinafter fixed to bring before the Court evidence, in accordance with this opinion, which would justify Mezei's detention for a further period. If deportation should be effectuated during the period, that will dispose of the case. I am aware that Mezei argues that the government can only deport him to the country from where he came (Title 8 U. S. C., Section 154); which according to judicial interpretation means France and England and/or Hungary. Mezei has shown his willingness to go elsewhere if the government can so arrange. If he does not consent, that would, of course, be reasonable grounds for a further detention.

If the government has not satisfied this Court as to the disposal of Mezei's case or his continued detention by December 10, 1951, he will be released upon conditions that the Court will set at that time on application.

Settle order.

Dated New York, N. Y., November 9, 1951.

IRVING R. KAUFMAN,
U. S. D. J.

48 In United States District Court

Intermediate order

November 29, 1951

The writ of habeas corpus in the above entitled proceeding having come on to be heard before this court on the 30th day of October, 1951, and after hearing Jack Wasserman, attorney for the relator, in support of the writ, and Myles J. Lane, United States Attorney for the Southern District of New York (William S. Sexton, Assistant United States Attorney, of counsel) in opposition thereto, and upon the petition for the writ exhibits in support of the writ and the return thereto and all the papers and proceedings had herein, It is

Ordered that unless the respondent Edward J. Shaughnessy effectuates the deportation of the relator Ignatz Mezei on or before December 10, 1951, or satisfies this court before that date that the release of the relator would endanger the public safety, the continued detention of the relator Ignatz Mezei on and after December 10, 1951, is hereby declared to be illegal, and, It is

Further ordered that if the respondent, Edward J. Shaughnessy so elects, an offer of proof as to whether or not the release of relator Ignatz Mezei would endanger public safety, will be heard in camera, and It is

49 Further ordered that upon the failure of the respondent, Edward J. Shaughnessy, to effectuate the deportation of the relator Ignatz Mezei, or to satisfy the court that his release would endanger public safety, or to release the said Ignatz Mezei on or before December 10, 1951, the said Ignatz Mezei shall, on application to this court, be released upon such conditions as the court will then determine.

Dated New York, New York, November 29, 1951.

IRVING R. KAUFMAN,
U. S. D. J.

CERTIFICATE OF SERVICE (omitted in printing)

50 December 14, 1951

In United States District Court

Final order

A Writ of Habeas Corpus in the above-entitled proceeding, having come on to be heard before this Court on the 30th day of October 1951, and after hearing Jack Wasserman, Attorney for the relator, in support of the writ, and Myles J. Lane, United States Attorney for the Southern District of New York (William J. Sexton, Assistant United States Attorney, of Counsel), in opposition thereto, and upon the petition for the writ, the return thereto, and all papers and proceedings heretofore had herein and the Court having rendered an opinion dated November 9, 1951, and it appearing that the respondent has not released the relator nor executed the outstanding order of exclusion and it further appearing that the respondent has declined to disclose to this Court in Camera the nature of the evidence and information upon which respondent relies in maintaining that the detention of relator for a period of approximately 21 months pending exclusion is not unreasonable, it is

Ordered that the writ of habeas corpus herein be and the same hereby is sustained, and it is further

Ordered that the relator be discharged on Parole from the custody of the respondent if he executes a parole agreement, the conditions of which shall be:

51 (1) That the relator will personally report to the respondent once each week at a time and place to be fixed by the respondent,

(2) That the relator will keep the respondent advised at all times of his residence address,

(3) That the relator will not depart from the jurisdiction of this Court and from the Southern District of New York,

(4) That the relator will surrender to the respondent upon demand if execution of the exclusion order has been arranged,

(5) That the relator will report on demand to the respondent and submit to any questioning concerning his activities and associations, and

(6) That the respondent may take the relator into custody if he violates any of the conditions of his parole or if he commits or is believed about to commit any act, which, in the opinion of the respondent, may endanger the internal security of the United States, and it is further

Ordered that before discharge he shall post with the respondent a parole delivery bond in a sum not to exceed Five Thousand ($5,000) Dollars, if such bond is required by the Attorney General; and it is further

Ordered that the execution of this order be stayed until December 18, 1951, to permit the respondent herein to file a notice of appeal and if such notice of appeal is timely filed, it is further

52 Ordered that a stay of the execution of this order be and the same hereby is granted pending the final disposition of the said appeal.

Dated: New York, New York, December 14, 1951.

IRVING R. KAUFMAN,
U. S. D. J.

53 In United States District Court

Notice of appeal

December 17, 1951

SIR: Notice is hereby given that the respondent hereby appeals to the United States Court of Appeals for the Second Circuit, from that portion of the order entered in this proceeding on December 14, 1951, which sustains the writ of habeas corpus herein, and directs the relator's discharge on parole.

Dated: New York, N. Y., December 17, 1951.

Yours, etc.,

MYLES J. LANE,
United States Attorney for the Southern District of New York, Attorney for Respondent. Office and P. O. Address, United States Courthouse, Foley Square, New York 7, New York.

TO GEORGE MOERMAN, ESQ., AND JACK WASSERMAN, ESQ.,
305 Broadway, New York, N. Y.

54 In United States District Court

Notice of cross appeal

December 21, 1951

[Title omitted.]

Sir: Notice is hereby given that the relator hereby cross-appeals to the United States Court of Appeals from that portion of the order entered herein on December 15, 1951, which imposes conditions upon the relator's release and the posting of a bond of $5,000 and from the court's affirmance of the right of respondent to deny relator an exclusion hearing.

55 Dated Washington, D. C., December 21, 1951.

Yours, etc.

JACK WASSERMAN,
Warner Building, Washington, D. C.,
Attorney for Relator.

GEORGE MORRMAN,
346 Broadway, New York,
Of Counsel.

To MYLES J. LANE,
United States Attorney for the Southern District of New York, Attorney for Respondent, Foley Square, New York 7.

CERTIFICATE OF SERVICE (omitted in printing)

56 *Stipulation as to record* (omitted in printing)

57 [Clerk's Certificate to foregoing transcript omitted in printing.]

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 189—October Term, 1951.

(Argued February 8, 1952 Decided March 20, 1952.)

Docket No. 22263

UNITED STATES OF AMERICA *ex rel.* IGNATZ MEZEI, *Relator*,

—v.—

EDWARD J. SHAUGHNESSY, District Director, Immigration and Naturalization Service, Ellis Island, New York, *Respondent*.

Before:

SWAN, *Chief Judge*, and L. HAND and CLARK, *Circuit Judges*.

Appeal from the United States District Court for the Southern District of New York.

Petition for a writ of habeas corpus by Ignatz Mezei, an alien detained at Ellis Island, to which Edward J. Shaughnessy, District Director, Immigration and Naturalization Service, Ellis Island, New York, made return. The District Court rendered a decision, D. C. S. D. N. Y., 101 F. Supp. 66, indicating a conditional intention to sustain the writ, and thereafter in due course entered an order sustaining the writ and directing the petitioner-relator's discharge on parole under certain specified restrictions; and both parties appeal. Affirmed on respondent's appeal; reversed and remanded on relator's appeal.

JACK WASSERMAN, Washington, D. C. (George Moerman, New York City, on the brief), *for relator*.

WILLIAM J. SEXTON, Asst. U. S. Atty., New York City (Myles J. Lane, U. S. Atty., New York City, Louis Steinberg, Dist. Counsel, and Max Blau and Lester Friedman, Attys., U. S. Department of Justice, Immigration and Naturalization Service, on the brief), *for respondent*.

CLARK, *Circuit Judge:*

The District Director of the Immigration and Naturalization Service for the New York District appeals from a final order of the District Court sustaining a writ of habeas corpus and directing the conditional release of the relator after twenty-one months' custody on Ellis Island. The order was entered after respondent had declined to produce certain information called for by the judge in a preliminary decision, D. C. S. D. N. Y., 101 F. Supp. 66. From the facts it appears that Mezei, the relator, was born on Gibraltar in 1897 and thus is a native of Great Britain. He was admitted to the United States on December 23, 1923, for permanent residence and has lived for the past twenty-five odd years in Buffalo, New York, where he owns his own house. He is married to a native-born American and his children were also born in this country. It is pointed out in his behalf that during World War II he sold United States War Bonds, donated blood to the Red Cross, and acted as a civilian defense air-raid warden.

But in 1948 Mezei left the United States, apparently to see his dying mother in Europe, and, though refused permission to enter Roumania where she resided, remained for some months in Hungary because of "difficulty in securing an exit permit." Finally, on February 2, 1950, he sailed from Le Havre on the Ile de France for return to the United States, armed with an American quota visa issued by our Budapest Consulate December 1, 1949. On his arrival in New York, February 5, however, he was temporarily excluded by the immigration authorities from admission pursuant to 8 CFR 175.57. On May 10, the Attorney General ordered the exclusion made permanent and denied relator's request for a hearing before a Board of Special Inquiry pursuant to the same regulation authorizing a denial of such a hearing when the disclosure of confidential information would be "prejudicial to the public interest."

Thereafter two attempts were made to deport him to France, "the country whence [he] came." 8 U. S. C. A. § 154. Both times upon relator's arrival on their shores the French authorities denied him admission. Since then he has made continued efforts to effect entry elsewhere, applying to some twelve other nations. The State Department has negotiated unsuccessfully for his return to Hungary. None will have him. As the matter comes to us, then, relator is stateless and, until he succeeds in gaining admission to some foreign country, all of which have thus far been unanimous in their inhospitality, he will remain in confinement on Ellis Island. Hence this writ.

Why his presence here is "prejudicial to the interests of the United States" is an undisclosed secret known only to the Attor-

ney General's staff. For his part, relator has alleged the only basis for such a determination of which he is aware to be a previous membership in the International Workers' Order, which he joined for the purpose of securing life insurance. (We note in passing that the Supreme Court has voided the inclusion of this organization on the Attorney General's list of subversive organizations without a hearing. *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123.) Respondent, in the court below, refused to disclose the actual reasons when the District Judge directed that the writ be sustained unless he indicate them *in camera*. D. C. S. D. N. Y., 101 F. Supp. 66, 70. The final order was entered in the context of this refusal. Thus this appeal brings before us the question of whether or not indefinite detention on Ellis Island is to be permitted on the basis of the Attorney General's unreviewable permanent order of exclusion. We do not think it is.

It is true, as a divided Supreme Court has recently reiterated, that "an alien who seeks admission to this country may not do so under any claim of right." *U. S. ex rel. Knauff* v. *Shaughnessy*, 338 U. S. 537, 542. Nor need the determination of who is to be turned back be made on the basis of a hearing or the disclosure of the reasons why admission is to be denied. *Ibid.* To this end, then, a confinement without hearing is justified as in the exercise of the sovereign prerogative to exclude any and all aliens who seek entry into the United States.

But the power to hold can never be broader than the power to remove or shut out. To continue an alien's confinement beyond that moment when deportation becomes patently impossible is to deprive him of his liberty. See *Walker* v. *Chief Quarantine Officer*, D. C. Canal Zone, 69 F. Supp. 980. And unless accompanied by those indicia of legal procedure that are embedded in the constitution as the right of all men—including an objective standard of prohibited action, the right to counsel and to confront accusers, and a speedy trial—such confinement must violate the Fifth Amendment.

Respondent, relying heavily on the majority *Knauff* opinion, contends that constitutional protection is never available to an excluded alien. The irrelevance of the Fifth Amendment to the procedure there challenged, however, was based not on the fact that Mrs. Knauff was an alien denied admission, but rather on the theory that an order of deportation is not punishment for a crime and so one denied entry is not deprived of either life, liberty, or property. This is a distinction long recognized in the cases. See, *e.g.*, *Fong Yue Ting* v. *United States*, 149 U. S. 698, 723-724, 730. But where, as here, confinement is no longer justifiable as a means

to effectuate removal elsewhere, then liberty as such is at stake and the mandate of due process of law may be invoked by all, "whether citizens, aliens, alien enemies or enemy belligerents." Rutledge, *J.*, dissenting in *In re Yamashita*, 327 U. S. 1, 41, 42. The Fifth Amendment provides without qualification that no person shall "be deprived of life, liberty, or property, without due process of law." It is not confined to the protection of citizens; and its provisions, by definition, "are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality." *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369. They extend in fact to all whose presence here brings them within reach of the judicial and administrative processes of the United States Government. *United States* v. *Pink*, 315 U. S. 203, 228.

Thus the courts have held in the past that even a pending deportation does not make unavailable to aliens the privilege against self-incrimination, *Schoeps* v. *Carmichael*, 9 Cir., 177 F. 2d 391, 400, certiorari denied 339 U. S. 914; the right to reasonable bail, *U. S. ex rel. Pirinsky* v. *Shaughnessy*, 2 Cir., 177 F. 2d 708; or the protection against cruel and unusual punishments, *Wong Wing* v. *United States*, 163 U. S. 228. Nor while residing here are they prohibited from appealing to the guaranties of freedom of speech, *Bridges* v. *Wixon*, 326 U. S. 135, or against unreasonable searches and seizures, *Unitd States* v. *Wong Quong Wong*, D. C. Vt., 94 F. 832. We think it must follow that detention of a person in possession of a valid visa enabling him to reach our shores is justified only as a means necessary to carry out his lawful removal from the country. *Wong Wing* v. *United States*, *supra*, 163 U. S. at page 235. Hence where it no longer subserves this end and becomes instead nothing less than a device for imprisonment for past or suspected misdeeds without due process of law, it must violate the mandates of the Fifth Amendment. See *Ex parte Eguchi*, D. C. S. D. Cal., 58 F. 2d 417.

Nor has Congress spoken to the contrary. The assumed executive power to confine non-resident aliens seeking entry is not specifically granted; rather it is inferred from 8 U. S. C. A. § 137—4, providing for "temporary exclusion" of any alien who appears to the examining immigration authority to be subversive under 8 U. S. C. A. § 137. We are unable from this to infer a congressional conception of incarceration any broader than the exclusion process it was designed to effectuate. This would seem re-emphasized by the provisions of 8 U. S. C. A. § 156(a, b) made specifically applicable to deportation proceedings. By these it is provided that where the Attorney General is unable to effect the removal elsewhere of undesirable aliens within the continental United States,

he cannot keep them confined beyond a period of six months, but must enlarge them, though under provisions for their supervision if he finds that necessary. Detention in warrant deportation cases is thus specifically limited in time. We think this indicates a legislative policy in line with constitutional mandates. That no explicit provision is applicable in exclusion proceedings against aliens not already admitted does not, we think, signify another policy as to such persons. Rather it reflects the normal situation that an alien excluded from our shores is not here to be indefinitely confined; it is simply not geared to the case, developed by necessity and legal theory, where an alien is constructively not here, although actually with us in physical presence for an indefinite stay. So judicial power to release an alien from a general "unreasonable detention" has been widely accepted by the district courts. See *U. S. ex rel. Chu Leung* v. *Shaughnessy*, D. C. S. D. N. Y., 88 F. Supp. 91, affirmed 2 Cir., 176 F. 2d 249; *In re Krajcirovic*, D. C. Mass., 87 F. Supp. 379; *Staniszewski* v. *Watkins*, D. C. S. D. N. Y., 80 F. Supp. 132; *U. S. ex rel. Janavaris* v. *Nicolls*, D. C. Mass., 47 F. Supp. 201.

This power, however, has never before been exercised in favor of a "security" risk, and respondent urges this element on us as a ground for distinction. If the distinction exists it is not to be found in the statute. Congress has spoken here only to give the Attorney General the general power to make an exclusion order permanent; no broader sanctions against subversive aliens are provided for than for those who are excluded because of mental disability or disease. *U. S. ex rel. Schwarzhopf* v. *Uhl*, 2 Cir., 137 F. 2d 898, 900, therefore, recognizing the validity of more extensive statutory detention of allegedly dangerous foreigners in time of war without trial, is on this ground inapposite.

But respondent carries his vigorous objection further, asserting on grounds of public safety that this precedent will require the release of a host of persons dedicated to conspiring against the United States or actively participating with foreign governments or their nationals in continuing designs against us. Since counsel, as representing not only the respondent, but also the Attorney General, have declined to give the court, even *in camera*, specific grounds for their violent fears as to this individual, we can only draw conclusions from such general factors as are obvious to all. Thus we know that the federal investigative agencies continue in operation; the criminal statutes forbidding espionage, sabotage, and broader types of dangerous activity remain in force; and the speedy indictment and trial of actual crime in the courts still obtain. So, relying on our normal powers of observation, we cannot share the well-night fantastic belief that this individual, identified,

isolated, and under the strict surveillance to which he is and will now be subjected, constitutes so vital a menace to the peace and safety of this powerful nation that henceforth he must be held in strict confinement. On the other hand, there is no doubt of the meaning of the course we are asked to validate. However much it be clothed in legal semantics it is that a settled twenty-five-year resident of this country be now held in indefinite imprisonment without trial and on the uncontrolled direction of the policing arm of the executive. Even in a criminal case and after conviction had, Mr. Justice Jackson has said in words of eloquent admonishment: "Imprisonment to protect society from predicted but unconsummated offenses is so unprecedented in this country and so fraught with danger of excesses and injustice that I am loath to resort to it, even as a discretionary judicial technique to supplement conviction of such offenses as those of which defendants stand convicted." *Williamson* v. *United States*, 2 Cir., 184 F. 2d 280, 282. But the plight of this relator is actually much worse than if the charge against him had been formulated as one for indictment and criminal prosecution; for then he would have had the ordinary safeguards of judge and jury and face at least a definite punishment.

It must be noted, too, that in the absence of any indication of overt acts of subversiveness upon the part of the relator, we come dangerously close to imprisonment for mere beliefs or propaganda. If in fact our country needs so drastic a restraint as this, violative of all our concepts of due process, against this individual thus situated, then it would indeed seem admitted, as a former distinguished Attorney General has pointed out, that "our institutions do not have the sturdiness which our words to the rest of the world announce, and will falter under the greater impact of the alien dogma." Biddle, The Fear of Freedom 10, 1951. "Nothing that the agents of communism have done or can do in this country is so dangerous to the United States as what they have induced us * * * to do to ourselves." Barth, The Loyalty of Free Men, 1951, quoted by Professor Z. Chafee, Foreword, x.

The most recent decision of the Supreme Court, *Carlson* v. *Landon*, March 10, 1952, —— U. S. ——, —— S. Ct. ——, which upholds the Attorney General's discretionary power to deny bail pending determination of deportability, as we read it, does not controvert our view, but, we believe, lends a measure of support to it. The Court's interpretation of § 23 of the Internal Security Act of 1950, 8 U. S. C. A. § 156(a), is expressly traced to the opinions of this court in *U. S. ex rel. Zapp* v. *District Director of Immigration & Naturalization*, 2 Cir., 120 F. 2d 762; *U. S. ex rel. Potash* v. *District Director of Immigration & Naturalization*, 2 Cir., 169 F. 2d 747; *U. S. ex rel. Doyle* v. *District Director of Immigra-*

tion & Naturalization, 2 Cir., 169 F. 2d 753; and *U. S. ex rel. Pirinsky* v. *Shaughnessy*, *supra*, and supports the approach of this court in our prevailing and dissenting opinions in *U. S. ex rel. Young* v. *Shaughnessy*, 2 Cir., Feb. 13, 1952. Certainly, of itself, it does not broaden the right of restraint beyond all need of what it is designed to effectuate, but specifies that "Detention is necessarily a part of this deportation procedure." The opinion is in fact quite carefully limited to the case in hand, perhaps because of the vigorous dissents on the part of four of the justices. So it states "that the problem of habeas corpus after unusual delay in deportation hearings is not involved in this case." *A fortiori*, it would seem, this postpones for the future final adjudication of the effect of unusual delay in carrying out of the administrative writ after the proceedings as to deportability have reached their conclusion.

The relator has also appealed from the District Court's enlargement order. He contends that the condition of a $5,000 performance bond and the limitation on his travel to the Southern District of New York are in conflict with an alleged right to complete release and further are unreasonable. As to the first, there can be no doubt that bond and movement limitations may be set under the general authority to impose conditions "upon the performance of which the continued liberty of the alien to reside within the bounds of this country may be made to depend." *Zakonaite* v. *Wolf*, 226 U. S. 272, 275. *Ex parte Lee Fong Fook*, D. C. N. D. Cal., 74 F. Supp. 68, reversed on other grounds *Lee Fong Fook* v. *Wixon*, 9 Cir., 170 F. 2d 245, certiorari denied 336 U. S. 914; *Anthony* v. *Hunter*, D. C. Kan., 71 F. Supp. 823; and *U. S. ex rel. Chong Mon* v. *Day*, D. C. S. D. N. Y., 36 F. 2d 278, are instances where the courts have set conditions of this nature on the issuance of a writ of habeas corpus.

But serious doubt may be entertained as to the reasonableness of all of the conditions here set. Their function is essentially to secure the reappearance of relator, should deportation subsequently become possible. See *Stack* v. *Boyle*, 342 U. S. 1, 4-5. Thus the $5,000 bond may be, as alleged, unduly high; petitioner asserts his inability to satisfy it and there is no evidence that he is presently at large. Such a bond should not be of such an amount as substantially to defeat the relator's right to enlargement. And the restriction of his movements to the Southern District of New York seems especially severe in view of the fact that his wife, family, and home are located in Buffalo. Relator's final objection to the absence of a hearing prior to the order of deportation, however, is without substance in view of the holding in *U. S. ex rel. Knauff* v. *Shaughnessy*, *supra*.

We therefore affirm on respondent's appeal and reverse and remand on relator's appeal for a hearing before the District Judge on the sole question of the reasonableness of these conditions set on relator's enlargement.

L. HAND, *Circuit Judge* (dissenting):

I believe that my brothers agree that Mezei, although he had been long lawfully resident in the United States, was not entitled, when he left in 1948, to reenter as an alien who had "temporarily departed"*; and that he was in precisely the same position as though this had been his first visit. *United States ex rel. Polymeris* v. *Trudell*, 284 U. S. 279. I assume that we also agree that his presence at Ellis Island did not change his legal situation from what it had been when the inspector excluded him on the ship; he had not "entered" the United States and the order before us is one of "exclusion" and not of "deportation." *Kaplan* v. *Tod*, 267 U. S. 228 (incidentally that was a far harsher case than this). So much taken for granted, the only question is whether an alien, who comes to this country and is lawfully excluded, may secure a qualified admission because there is no country which will accept him, for I shall take it that that is true of Mezei.

I do not believe that an alien so situated can force us to admit him at all. Suppose, as I have just suggested, that the respondent had refused to let him leave the ship. I do not see what legal process Mezei could have invoked to get ashore before she left; nor do I see what theory supports the claim that, because we did not impose upon him this harsher alternative, but, *ex gratia*, allowed him to land until his case was decided, we must grant him even a limited version of that entry which the statute denies him. For we must remember that the order does give him a privilege of entry which will endure as long as no other country will receive him. Moreover, although that privilege is hedged about in various ways, he will be able nevertheless to mingle with the mass of citizens, and spread among them what I suppose we are to consider as the contagion of his baleful presence. Think what one may of a statute based upon such fears, when passed by a society which professes to put its faith in the free interchange of ideas, a court has no warrant for refusing to enforce it. If that society chooses to flinch when its principles are put to the test, courts are not set up to give it derring-do.

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* § 213(b) Title 8 U. S. C.

No constitutional question can arise. An alien, who comes to our shores and the ship which bears him, take the chance that he may not be allowed to land. If that chance turns against them, both know, or, if they do not, they are charged with knowledge, that, since the alien cannot land, he must find an asylum elsewhere; or, like the Flying Dutchman, forever sail the seas. When at his urgence we do let him go ashore—*pendente lite* so to say—we may give him whatever harborage we choose, until he finds shelter elsewhere if he can. Had Mezei never resided here, I wonder whether this would have been doubted, and, as I have said, we are forced to treat him as though he never had been a resident.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

UNITED STATES EX REL. MEZEI

v.

EDWARD J. SHAUGHNESSY, ETC.
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JUDGMENT

United States Court of Appeals
Second Circuit
Filed Mar 20 1952
Alexander M. Bell, Clerk

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 20th day of March one thousand nine hundred and fifty-two Present:

HON. THOMAS W. SWAN,
Chief Judge,

HON. LEARNED HAND,
HON. CHARLES E. CLARK,
Circuit Judges.

UNITED STATES EX REL. IGNATZ MEZEI,
Relator-Appellant,

v.

EDWARD J. SHAUGHNESSY, District Director, etc., *Respondent-Appellant.*

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the appeal by the respondent from the order of said District Court be and it hereby is affirmed; and the appeal by the relator be and it hereby is reversed and cause remanded for a hearing before the District Judge on the sole question of the reasonableness of the conditions set on relator's enlargement in accordance with the opinion of this court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

ALEXANDER M. BELL, *Clerk.*

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF NEW YORK

I, ALEXANDER M. BELL, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 71, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of

UNITED STATES OF AMERICA EX REL. IGNATZ MEZEI,
Relator-Appellant,

against

EDWARD J. SHAUGHNESSY, District Director of Immigration and Naturalization, etc., *Respondent-Appellant,*

as the same remain of record and on file in my office.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 2nd day of June in the year of our Lord one thousand nine hundred and fifty-two, and of the Independence of the said United States the one hundred and seventy-sixth.

SEAL

/s/ ALEXANDER M. BELL
Clerk.

U. S. GOVERNMENT PRINTING OFFICE 1952—209510/P O 1297

71 Supreme Court of the United States

No. 139, October Term, 1952

EDWARD J. SHAUGHNESSY, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION, PETITIONER

v.

UNITED STATES OF AMERICA, EX REL. IGNATZ MEZEI

Order allowing certiorari

Filed October 13, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1952